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In re Application of :  
TEMSAMANI, Jamal, et al. :  
Application No.: 09/856,940 :  
PCT No.: PCT/FR99/02939 :  
Int. Filing Date: 26 November 1999 :  
Priority Date: 30 November 1998 :  
Attorney Docket No.: 19904-013NATL :  
For: PHARMACEUTICAL :  
COMPOSITION COMPRISING :  
AN ANTI-CANCER AGENT AND :  
AT LEAST A PEPTIDE :

DECISION ON  
  
PETITION UNDER  
  
37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.47(a)," filed in the United States Patent and Trademark Office (USPTO) on 22 February 2002.

**BACKGROUND**

On 26 November 1999, applicants filed international application PCT/FR99/02939, which claimed a priority date of 30 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 08 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 30 June 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 30 May 2001.

On 30 May 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 10 July 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. The NOTIFICATION set a two-month extendable period for reply.

On 06 December 2001, applicants submitted the petition under 37 CFR 1.47, which was accompanied by, *inter alia*, a petition for a three-month extension of time; the fee for a three-month extension of time; and a combined declaration and power of attorney executed by inventors

Jamal Temsamani and Michel Kaczorek.

On 30 January 2002, the Office mailed Decision on Petition Under 37 CFR 1.47(a) dismissing the petition without prejudice.

On 22 February 2002, applicants filed "Renewed Petition Under 37 CFR 1.47(a)," accompanied by, *inter alia*, a statement of facts and copies of postal receipts and letters with translations.

### **DISCUSSION**

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Applicants previously satisfied items (1) and (4).

Item (3) has now been satisfied. Applicants state the last known residence of the non-signing inventor, Annick Colin de Verdier as 4 rue Rémi Belleau, 86 000 POITIERS, FRANCE.

Under 37 CFR 1.47(a), the petition must supply proof of pertinent facts. Applicants have provided a statement of facts from Pierre Breesé. The statement says "the undersigned has first-hand knowledge of the facts recited herein." However, when discussing the mailing of letters to Annick Colin de Verdier, Mr. Breesé states "on more than one occasion *in accordance with my instructions*, a complete copy [of the] application papers and a Declaration form was [*sic.*] forwarded to Annick Colin de Verdier for her review and signing of the Declaration form." [emphasis added]. "In accordance with my instructions" indicates that Mr. Breesé lacks first-hand knowledge of the facts in the statement. Further, the letters sent to Ms. Colin de Verdier were signed by one "Alain Yvorra" and list the enclosures as "release for Canada, assignment and power of attorney for the US." The statement of the enclosures does not support Mr. Breesé's assertion that a full set of application papers was forwarded to Ms. Colin de Verdier.

### **CONCLUSION**

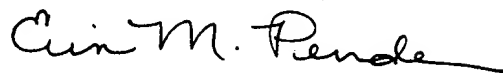
For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.



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